



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-840]

Lightweight Thermal Paper from Germany: Notice of Court Decision Not in Harmony with Amended Final Results and Notice of Second Amended Final Results of Antidumping Duty Administrative Review; 2009-2010

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is notifying the public that the Court of International Trade's (CIT or Court) final judgment in this case is not in harmony with the Department's amended final results and is therefore amending for a second time the final results of the second administrative review of the antidumping duty order on lightweight thermal paper from Germany with respect to the rate assigned to Papierfabrik August Koehler AG (Koehler).

DATES: *Effective:* July 16, 2016.

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3965.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2012, the Department published the final results of the second administrative review of the antidumping duty order on lightweight thermal paper from Germany, covering the

period November 1, 2009, through October 31, 2010.<sup>1</sup> On May 16, 2012, the Department amended the *AR2 Final Results* to correct a ministerial error.<sup>2</sup> As a result, the Department assigned Koehler a weighted-average dumping margin of 4.33 percent.<sup>3</sup> Subsequently, Koehler and Appvion, Inc.<sup>4</sup> challenged the *AR2 Amended Final Results* in the CIT.<sup>5</sup> While that litigation was pending, the Department published the final results of the third review of the *Order* in which it found that Koehler had engaged in a transshipment scheme, which began in the prior, second review period, and withheld requested information.<sup>6</sup> As a result, in the *AR3 Final Results* the Department found that Koehler had failed to cooperate to the best of its ability in complying with the Department's requests for information and assigned Koehler a total adverse facts available (AFA) rate of 75.36 percent.<sup>7</sup> In light of the *AR3 Final Results*, in the litigation concerning the *AR2 Amended Final Results*, the Department sought a voluntary remand to reconsider the *AR2 Amended Final Results*, which the Court granted.

On June 16, 2014, the Department issued its final results of redetermination pursuant to remand.<sup>8</sup> The Department determined that, based on the transshipment scheme which began in

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<sup>1</sup> See *Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009–2010 Antidumping Duty Administrative Review*, 77 FR 21082 (April 9, 2012) (*AR2 Final Results*); see also *Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China*, 73 FR 70959 (November 24, 2008) (*Order*).

<sup>2</sup> See *Lightweight Thermal Paper From Germany: Notice of Amended Final Results of the 2009–2010 Antidumping Duty Administrative Review*, 77 FR 28851 (May 16, 2012) (*AR2 Amended Final Results*).

<sup>3</sup> See *id.*, 77 FR at 28851.

<sup>4</sup> Formerly known as Appleton Papers Inc.

<sup>5</sup> See Consol. Court No. 12-00091.

<sup>6</sup> See *Lightweight Thermal Paper from Germany: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 23220 (April 18, 2013) (*AR3 Final Results*). The CIT affirmed the *AR3 Final Results* in their entirety. See *Papierfabrik August Koehler SE v. United States*, 7 F. Supp. 3d 1304 (Ct. Int'l Trade 2014). Koehler's appeal of that decision before the Court of Appeals for the Federal Circuit (Federal Circuit) is pending. See Court No. 15-1489.

<sup>7</sup> See *AR3 Final Results*, 78 FR at 23221.

<sup>8</sup> See *Final Remand Redetermination Pursuant to Court Remand, Lightweight Thermal Paper from Germany, Papierfabrik August Koehler AG v. United States*, Consol. Court No. 12-00091 (June 16, 2014) (*AR2 Final Remand*).

the second review period and had been uncovered in the third review, Koehler had failed to cooperate to the best of its ability in complying with the Department's requests for information in the second review.<sup>9</sup> As a result, the Department assigned Koehler an AFA rate of 75.36 percent, and corroborated the rate using Koehler's transaction-specific margins from the second review.<sup>10</sup>

On July 6, 2016, the Court affirmed the AR2 Final Remand, finding that the Department had properly reconsidered the *AR2 Amended Final Results* and applied total AFA in light of the nature of Koehler's conduct.<sup>11</sup> In addition, although the Court found that the rate of 75.36 percent was not properly corroborated by the highest transaction-specific margin on the record of the second review, it found that, under the circumstances, the Department was within its discretion in relying on the 75.36 percent rate, the highest rate in any previous segment of the proceeding.<sup>12</sup> Thus, the Court affirmed the AFA rate of 75.36 percent as applied to Koehler.<sup>13</sup>

#### Timken Notice

Consistent with its decision in *Timken*,<sup>14</sup> as clarified by *Diamond Sawblades*<sup>15</sup> the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *Papierfabrik August Koehler AG v. United States*, Consol. Court No. 12-00091, Slip Op. 16-67 (July 6, 2016) (*Koehler*) at 13-24.

<sup>12</sup> *Id.*, at 33 ("The court declines to construe the corroboration requirement so as to eliminate the discretion Commerce must possess to confront the serious misconduct it encountered in this case, in which Koehler undermined the integrity of the proceeding Commerce conducted and prevented Commerce from fulfilling its statutory responsibility.").

<sup>13</sup> *Id.*, at 34.

<sup>14</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>15</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

decision. On July 6, 2016, the CIT sustained the Department's final results of redetermination pursuant to remand in *Koehler*.<sup>16</sup> The CIT's judgment in *Koehler* sustaining the AR2 Final Remand constitutes a final decision of that court that is not in harmony with the *AR2 Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

#### Second Amended Final Results

Because there is now a final court decision, we are amending the *AR2 Amended Final Results* with respect to the rate assigned to *Koehler* as follows:

<b>Company</b>	<b><i>AR2 Amended Final Results</i> Dumping Margin</b>	<b>Second Amended Final Results Dumping Margin</b>
Papierfabrik August Koehler AG	4.33 percent	75.36

In the event the CIT's July 6, 2016, decision in *Koehler* is not appealed, or is upheld by a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the revised rate listed above.

#### Cash Deposit Requirements

As a result of the determination by the International Trade Commission that revocation of the *Order* would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department revoked

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<sup>16</sup> See *Koehler* at 13-24, and 34.

the *Order*, effective November 24, 2013, and stopped collecting cash deposits under the *Order*.<sup>17</sup>

Therefore, the cash deposit requirement for Koehler will not be changed as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 3, 2016.

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Ronald K. Lorentzen,  
Acting Assistant Secretary  
for Enforcement and Compliance.

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<sup>17</sup> See *Lightweight Thermal Paper From the People's Republic of China and Germany: Continuation of the Antidumping and Countervailing Duty Orders on the People's Republic of China, Revocation of the Antidumping Duty Order on Germany*, 80 FR 5083, 5084 (January 30, 2015).

